

APPEAL NO. 030579
FILED APRIL 22, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 19, 2002. The hearing officer determined that (1) the appellant (claimant) sustained a compensable injury on _____; (2) the claimant did not have disability from the compensable injury; and (3) the respondent (carrier) waived its right to contest the compensability of the claimed injury by not contesting the injury in accordance with Section 409.021. The claimant appeals the hearing officer's disability determination on sufficiency of the evidence grounds, and because of the lack of a written bona fide offer of employment (BFOE) by the employer in view of the claimant's work restrictions to light duty. The claimant asserts that disability continued through the date of the hearing. The appeal file does not contain a response from the carrier. The hearing officer's injury and waiver determinations were not appealed and are, therefore, final. Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not have disability. Whether the claimant had an inability to obtain or retain employment at her preinjury wage because of the compensable injury was a question of fact. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant appears to assert that she had disability, as a matter of law, because the employer failed to make a written BFOE consistent with her light-duty restrictions, notwithstanding her return to her previous employment following the date of injury. We have said that the issues of BFOE and disability are distinct issues. Texas Workers' Compensation Commission Appeal No. 001143, decided July 3, 2000. Disability concerns whether a claimant is unable to obtain and retain employment at wages equivalent to the preinjury wage because of a compensable injury, while a BFOE is used to determine the amount of temporary income benefits due, if any. Id. The claimant's argument is therefore, untenable.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Terri Kay Oliver
Appeals Judge